REMARKS

Rejections Under Section 112

The Examiner has rejected claims 1, 3 and 12 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

With respect to claim 1, the Applicant has corrected by amendment the antecedent basis issue identified by the Examiner.

With respect to claims 3 and 12, the Examiner contends that the Applicant must identify "exactly the version and date of the protocol" referred to in the claim as "Extreme Networks Standby Router Protocol" to provide clarification to the claimed invention. The Applicant has instead incorporated into the claim language features present in that protocol that are pertinent. It is submitted that the claim has support in the original specification since a person of ordinary skill in the art would understand that such features were present in the "Extreme Networks Standby Router Protocol" as of the filing date.

Rejection Under Section 102

The Examiner has rejected claims 1, 2, 4, 5, 6, 7, 9, 10, 11, 13-16 and 18 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,751,191 to Kanekar *et al.* (the "'191 patent").

The '191 patent discloses a device for forwarding packets in a network. A first router and second router share interfaces, and the first router and second router share forwarding data for forwarding packets on the shared interfaces. *See* '191 patent, Abstract.

The '191 patent discloses the use of a plurality of redundant routers. The present invention, however, calls for switches. While the Examiner suggests that routers and switches are the same, they are not. Routers identify a path to a destination host by looking at the header portion of an incoming packet. The header contains the recipient's network address at Layer 3, whether it is, for example, IP, IPX, or AppleTalk. The router then compares the destination address to its routing table, which consists of the addresses of other nodes or routers, and

forwards the packet off in the right direction. Multiple routes might be available for the packet to travel from source to destination, so the router uses different types of algorithms, such as Distance Vector routing (e.g. IGRP) or Link-State routing (e.g. OSPF), to determine the appropriate route.

In contrast, a switch is a piece of hardware that creates an isolated collision domain between network devices. A collision domain is the path the packets have to travel within the connecting device. For instance, the virtual circuit within the switch is a collision domain. Hubs, since they always consist of a single static collision domain, are subject to a high collision rate and frequent data corruption, which render them inefficient as traffic control devices. Switches solve this problem by creating virtual circuits, which consist of isolated collision domains. To create the virtual circuits, a switch needs a large backplane, usually at least 1 GB. When a device wants to communicate or transmit data, the switch will create a virtual circuit, or pathway, for the transmitting device to send the data. How the switch determines the pathway to the destination node depends on the type of switch it is. The Layer 2 Switch, otherwise known as a dumb switch, only looks at the packet's MAC layer. To create the virtual circuit, the switch looks up the MAC address in its own routing table and creates an isolated circuit for the data to travel. So, if the two transmitting nodes' packets do collide, they are only affecting each other, not the rest of the nodes on the network.

Layer 3 switching is used to segment a LAN rather than to provide a WAN connection. To further segment a LAN, switches offer VLAN capability. VLANs are virtual LANs within the actual switch. The switch actually does the routing within itself if a node wants to communicate with another node on a different VLAN. A Layer 3 switch goes beyond the Layer 2 MAC addressing and routing. The Layer 3 switch looks at the incoming packet's networking protocol. For example, with IP as the network protocol, the switch examines a packet's IP address and compares the destination address to the list of addresses in its routing table and creates the virtual circuit. It then forwards the packet to the recipient's address.

In view of this salient distinction between routers and switches, the '191 patent does not teach the following elements of claim 1: "a first switch having a master mode and a standby mode"; "a second switch having a master mode and a standby mode," "wherein said first switch

is configured, upon a detection of a network failure, to restart auto-negotiation of said ports, and to transition to said standby mode; and wherein said second switch is configured, upon said detection of a network failure, to transition to said master mode."

With respect to claim 10, the '191 patent does not teach or suggest "establishing a first switch having a master mode and a standby mode as a master switch"; "configuring said master switch to provide switching between said ports"; "establishing a second switch having a master mode and a standby mode as a standby switch"; "restarting auto-negotiation of said ports with said master switch"; "transitioning said first switch to standby mode, whereby said first switch becomes said standby switch"; and "transitioning said second switch to master mode, whereby said second switch becomes said master switch."

Claims 2-9 and 11-18 are dependent upon claims 1 and 10, and are thus allowable over the '191 patent.
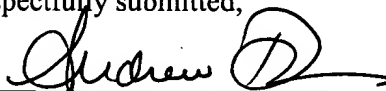
Rejections Under Section 103

The Examiner has rejected claims 3 and 12 as obvious over the '191 patent in view of the ExtremeWare Software User's Guide--Software Version 6.1 (April 2000) ("ESUG"). More specifically, the Examiner contends that ESUG discloses the ESRP protocol, and that it would have been obvious to use the ESRP protocol in the claimed invention. For at least the reasons set forth above, these claims are believed to be allowable.

With respect to claims 8 and 17, the Examiner concedes that neither the '191 patent nor the ESUG teaches or suggests using ping track. The Examiner argues, however, that U.S. Patent No. 6,108,300 to Coile *et al.* (the "'300 patent") can be combined with the '191 patent to render the invention described in claims 8 and 17 obvious. As the Examiner is well aware, there must be some teaching or suggestion in the prior art before references can be combined. The claims cannot be used as a template into which disparate pieces of art are fit. The Examiner has cited no basis to properly combine the references. Therefore, the Applicant respectfully requests that this rejection under Section 103 be withdrawn.

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In view of the amendments and remarks set forth above, Applicant believes the pending application is in condition for allowance, which Applicant respectfully requests.

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Respectfully submitted,

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